



UNIVERSITY OF
TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY



3 1761 06102327 1

ADMINISTRATIVE LAW

CASE BOOK VOLUME IV

Freya Kristjanson

and

Leslie McIntosh

Faculty of Law University of Toronto

Spring 2007

Storage

**KE
5015
.A7K75
2007
v.4
c.1**

CLASS #1 - TUESDAY, JANUARY 9

Introduction

1. David J. Mullan, "The Administrative State and the Rule of Law", *Administrative Law Cases, Texts and Materials* (5th Ed.), [2003: Edmond Montgomery Publications Ltd., Toronto], pp. 3-35, CB I., p. 1
2. McLachlin, C.J., "Rules and Discretion in the Governance of Canada" (1992), 56 *Sask. L. Rev.* 167, CB I., p 18

CLASS #2 - THURSDAY, JANUARY 11

II. The Duty of Fairness

A. The Duty of Fairness – The Modern Expression

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I., p. 26

Recommended:

2. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 208 D.L.R. (4th) 1, CB I., p. 47

CLASS #3 - TUESDAY, JANUARY 16

B. Evolution of the Duty of Fairness

1. *Mullan*, pp. 99-116, CB I., p. 76
2. *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I., p. 86
3. *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I., p. 94
4. *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I., p. 104
5. *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, 69 D.L.R. (4th) 489, CB I., p. 122
6. *Re Securicor Investigations & Security Ltd. and OLRB* (1985), 50 O.R. (2d) 570, 18 D.L.R. (4th) 151 (C.A.), CB I., p. 138
7. *Baker*, pp. 210-214, para. 21-28, CB I., p. 26

CLASS #4 - THURSDAY, JANUARY 18

III. Threshold – When Does the Duty Arise?

A. Decisions Affecting Rights/Privileges/Interests

1. *Knight v. Indian Head School Division No. 19*, CB I., p. 122
2. *Re Webb and Ontario Housing Corporation* (1978), 22 O.R. (2d) 257 (C.A.), 93 D.L.R. (3d) 187, CB I., p. 141
3. *Re Collins et. al. and Pension Commission of Ontario et. al.* (1986), 56 O.R. (2d) 274 (Div. Ct.) , CB I., p. 148

B. No Fairness Duty: General Policy /Legislative Decision-Making

1. *Mullan*, pp. 147-152, CB I., p. 156
2. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.) , CB I., p. 160
3. *Homex Realty & Development Company v. Wyoming*, [1980] 2 S.C.R. 1011, 116 D.L.R. (3d) 1 (Ont.) , CB I., p. 171
4. *Authorson v. Canada (Attorney General)*, 2003 S.C.C. 39, 227 D.L.R. (4th) 385, CB I., p. 188

CLASS #5 - TUESDAY, JANUARY 23

C. Investigating/Advising/Recommending

1. *Mullan*, pp. 166-171, CB I., p. 201
2. *Re Abel and Advisory Review Board* (1981), 31 O.R. (2d) 520 (C.A.), aff'g. (1979), 24 O.R. (2d) 279 (Div. Ct.) , CB I., p. 207
3. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I., p. 216
4. *Masters v. Ontario* (1994), 18 O.R. (3d) 551 (Div. Ct.), 115 D.L.R. (4th) 319, CB I., p. 227

D. Domestic Affairs of Private Associations

1. *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] S.C.R. 165; 97 D.L.R. (4th) 17, CB I., p. 249

CLASS #6 - THURSDAY, JANUARY 25

E. Applications for Benefits/Licences

1. *Hutfield v. Board of Fort Saskatchewan General Hospital District No. 98* (1986), 24 Admin. L.R. 250 (Alta. Q.B.) , CB I., p. 262
2. *Toronto Independent Dance Enterprise v. Canada Council*, [1989] 3 F.C. 516, 60 D.L.R. (4th) 503 (T.D.) , CB I., p. 271
3. *Comeau's Seafood Ltd. v. Canada*, [1997] 1 S.C.R. 12, CB I., p. 277
4. *Everett v. Canada (Minister of Fisheries and Oceans)* (1994), 169 N.R. 100 (F.C.A.) , CB I., p. 284

CLASS #7 - TUESDAY, JANUARY 30

IV. Sources of Procedural Fairness: Statutes, Regulations, Procedural Codes, Policies & Rules

A. Statutes and Regulations

1. *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended and O.Reg.562/05, as amended (excerpts) , CB I., p. 291
2. *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, CB I., p. 334
3. *University of Toronto Act, 1971*, S.O. 1971, c.56 and Code of Behaviour on Academic Matters (June 1, 1995) , CB I., p. 347

Recommended:

4. *Royal Commission Inquiry into Civil Rights*, Report Number One, Volume 3 (Queen's Printer, 1968) Chapters 77 and 78 ("McRuer Report") , CB I., p. 376

CLASS #8 - THURSDAY FEBRUARY 1

B. Procedural Codes: Statutory Powers Procedure Act

1. *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB I., p. 387

Recommended:

2. *Royal Commission Inquiry into Civil Rights*, Report Number One, Volume 1 (Queen's Printer, 1968) Chapter 14 ("McRuer Report"), CB II., p. 1

3. Boyer, Patrick, *A Passion For Justice: The Legacy of James Chalmers McRuer* (Toronto: U of T Press, 1994) pp. 306-316, CB II., p. 11

CLASS #9 - TUESDAY FEBRUARY 6

C. Policies and Rules

1. Mullan, pp. 675-684, CB II., p. 18
2. *Capital Cities v. CRTC*, [1978] 2 S.C.R. 141, CB II., p. 28
3. *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.), CB II., p. 43
4. *Benitez v. Canada (Minister of Citizenship & Immigration)*, [2006] F.J. No. 631, para. 129-172 (T.D.), CB II., p. 47
5. Social Benefits Tribunal – Practice Directions 2, 3, 4 and 6, CB II., p. 83
6. Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal (August 1, 2004), CB II., p. 103

CLASS #10 - THURSDAY FEBRUARY 8

V. Procedural Rights

A. Hearing Stage – Oral Hearings, Public Hearings

1. *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB II., p. 132
2. *Everett v. Canada (Minister of Fisheries and Oceans)*, 25 Admin. L.R. (2d) 112 (C.A.), CB I., p. 284
3. *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4th) 280 (FCA), CB II., p. 144
4. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 (Fed.) – previously assigned, CB I., p. 26
5. *SPPA*, s. 9, CB I., p. 387

B. Notice and Scope of Hearing:

1. *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4th) 471, CB II., p. 151

2. *Henderson v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 2213 (C.A.) , CB II., p. 156
3. *Wong v. College of Traditional Chinese Medical Practitioners and Acupuncturists of British Columbia*, [2005] B.C.J. No. 2219 (C.A.) , CB II., p. 163
4. *SPPA*, ss. 6, 7 and 8, CB I., p. 387

CLASS #11 - TUESDAY FEBRUARY 13

C. Disclosure and Discovery

1. *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4th) 1, CB II., p. 174
2. *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4th) 1, CB II., p. 181
3. *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.) , CB II., p. 184
4. *Mullan*, pp. 352-361, CB II., p. 194

D. Right to Counsel and Cross-Examination

1. *Mullan*, pp. 456-462, CB II., p. 204
2. *Re Irvine and R.T.P.C.*, [1987] 1 S.C.R. 181; 41 D.L.R. (4th) 429, CB II., p. 208
3. *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053; 101 D.L.R. (4th) 654, CB II., p. 215
4. *Egglestone v. Ontario (Advisory Review Board)* (1983), 150 D.L.R. (3d) 86 (Ont. Div. Ct.) , CB II., p. 220

CLASS #12 - THURSDAY, FEBRUARY 15

E. Decision on the Record and Reasons

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I., p. 26
2. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II., p. 230
3. *Gray v. Ontario (Disability Support Program, Director)*, [2002] O.J. No. 1531, 59 O.R. (3d) 364 (C.A.) , CB II., p. 236

4. *Mullan*, pp. 481-484, CB II., p. 244

VI. Legitimate Expectations: Duty and Content

1. *Mullan*, pp. 183-203, CB II., p. 248
2. *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 226 D.L.R. (4th) 193, CB II., p. 259
3. *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB II., p. 293

READING WEEK

CLASS #13 - TUESDAY FEBRUARY 27

VII. Bias

A. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

1. *R. v. Valente* (1985), 24 D.L.R. (4th) 161 (S.C.C.), CB II., p. 305
2. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385 (S.C.C.), CB II., p. 322
3. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4th) 289, CB II., p. 330
4. *Baker*, pp. 220-223, para. 45-50, CB I., p. 26
5. *Air Canada v. Lorenz*, [2000] 1 F.C. 494 (T.D.), CB II., p. 339

CLASS #14 - THURSDAY, MARCH 1

B. Tribunal Impartiality and Independence

1. *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II., p. 358
2. *Ellis-Don Ltd. v. Ontario (Labour Relations Board)* [2001] 1 S.C.R. 221, 194 D.L.R. (4th) 385, CB II., p. 375

3. *Re Katz and British Columbia Securities Commission et al.* (1995), 128 D.L.R. (4th) 424 (B.C.C.A.); aff'd. 139 D.L.R. (4th) 575 (S.C.C.) , CB II., p. 387

CLASS #15 - TUESDAY, MARCH 6

C. Structural Independence

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II., p. 398
2. *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB III., p. 1
3. *Brosseau v. Alberta Securities Commission* (1989), 57 D.L.R. (4th) 458 (S.C.C.), CB III., p. 11
4. *CUPE v. Minister of Labour*, pp. 258-261, para. 190-204, CB II., p. 259

CLASS #16 - THURSDAY MARCH 8

VIII. Tribunal Jurisdiction - Constitution and Human Rights Codes

1. *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB III., p. 19
2. *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; 231 D.L.R. (4th) 449, CB III., p. 36
3. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB III., p. 47

CLASS #17 - TUESDAY, MARCH 13

IX. Statutory Appeals and Judicial Review: Overview

1. Mullan, pp. 1150-1159, CB III., p. 64
2. *ODSPA*, s.31, CB I., p. 291
3. *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III., p. 74
4. *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III., p. 82
5. *Masters*, pp. 558-599 and pp. 593-595 (O.R.) , CB I., p. 227

6. *Homex*, pp. 27-31 (D.L.R.) , CB I., p. 171
7. *Martineau*, p.606 and pp. 616 to 624 (S.C.R.) , CB I., p. 104

CLASS #18 - THURSDAY, MARCH 15

B. Discretion and Justiciability

1. Mullan, pp. 951-953, CB III., p. 86
2. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III., p. 89
3. *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.) , CB III., p. 100
4. *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III., p. 110
5. *Thorne's Hardware Ltd. v. R.*, [1983] 1 S.C.R. 106, 143 D.L.R. (3d) 577, pp. 580-585, CB III., p. 131
6. *Black v. Canada (Prime Minister)* (2001), 54 O.R. (3d) 215, pp. 223-239 (C.A.) , CB III., p. 139

Recommended:

7. Judgment of Wilson J. in *Operation Dismantle*, *supra*, pp. 494-520, CB III., p. 117
8. Sossin, Lorne *Boundaries of Judicial Review: The Law of Justiciability in Canada* (Toronto: Carswell, 1999) pp. 1-26, CB III., p. 152

CLASS #19 - TUESDAY, MARCH 20

C. Remedies

1. *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.) , CB III., p. 167
2. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III., p. 179
3. *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III., p. 207
4. *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, (2004), 245 D.L.R. (4th) 1, p.23 (S.C.C.) , CB III., p. 233

Recommended:

5. Judgment of Binnie J. in *Mt. Sinai Hospital, supra*, pp. 200-223, CB III., p. 211
6. Judgment of LeBel & Deschamps JJ. in *Doucet-Boudreau, supra*, pp. 617-635, CB III., p. 197

CLASS #20 - THURSDAY, MARCH 22

D. Collateral Attacks

1. *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III., p. 245

E. Exhaustion of Alternative Remedies

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II., p. 398
2. *Harétkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III., p. 259

F. Parties and Standing

1. *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III., p. 280
2. *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.), CB III., p. 291
3. *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III., p. 300
4. *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.), CB III., p. 309

CLASS #21 - TUESDAY, MARCH 27

X. Standard of Review

A. The Modern Approach

1. *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] S.C.R., 223 D.L.R. (4th) 599, CB III., p. 315

2. *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247; 223 D.L.R. (4th) 577, CB III., p. 325

B. “Jurisdictional Error” and Privative Clause

1. *National Corn Growers Association v. Canada (Canadian Import Tribunal)*, [1990] 2 S.C.R. 1324; 74 D.L.R. (4th) 449, CB III., p. 337
2. *CUPE, Local 93 v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227 (N.B.), CB III., p. 359
3. *Mullan*, pp. 701-707; 714-723, CB III., p. 368

CLASS #22 - THURSDAY, MARCH 29

C. Patent Unreasonableness –

1. *National Corn Growers Association v. Canada (Canadian Import Tribunal)*, [1990] 2 S.C.R. 1324 (previously assigned), CB III., p. 337
2. *Toronto (City) v. C.U.P.E., Local 79*, [2003] 2 S.C.R. 77 (LeBel, J.), CB III., p. 377

CLASS #23 - THURSDAY, APRIL 5

D. Correctness

1. *Trinity Western University v. B.C. College of Teachers*, [2001] 1 S.C.R. 772; 199 D.L.R. (4th) 1, CB IV., p. 1
2. *Barrie Public Utilities v. Canadian Cable Television Association*, [2003] 1 S.C.R. 476, 225 D.L.R. (4th) 206, CB IV., p. 26

E. Standard of Review: Reasonableness Simpliciter

1. *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; 144 D.L.R. (4th) 1, CB IV., p. 45
2. *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132; 199 D.L.R. (4th) 577, CB IV., p. 60
3. *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256; 264 D.L.R. (4th) 577, CB IV., p. 73

CLASS #24 - TUESDAY, APRIL 10

XI. New Frontiers

Recommended:

1. Mullan and Ceddia, "Globalization, Democracy and Domestic Law: The Impact on Public Law of Privatization, Outsourcing and Downsizing – A Canadian Perspective", CB IV., p. 92
2. Sossin, "Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields and Discretionary Justice in Social Welfare", CB IV., p. 112
3. *Haida Nation v. British Columbia (Minister of Forests)* (2004), 245 D.L.R. (4th) 32, CB IV., p. 164

B. Exam Review

FINAL EXAM: TUESDAY, APRIL 17

::ODMA\PCDOCS\TOR01\3405963\2

